

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**Thomas G. Sleeth and Brianna A. Sleeth,**

**Plaintiffs,**

**v.**

**5:03-CV-317**

**The United States of America,**

**Defendant.**

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APPEARANCES:

Cote, Limpert & Van Dyke, LLP  
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Hon. Glenn T. Suddaby, United States Attorney  
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**Hon. Norman A. Mordue, Chief U.S. District Judge**

**MEMORANDUM-DECISION AND ORDER**

Presently before the Court are defendant's January 16, 2007 motion for summary judgment (Dkt. No. 75) and defendant's March 23, 2007 request (Dkt. No. 83) for reconsideration of the Court's March 8, 2007 ruling and/or related relief. For the reasons set forth below, the Court denies both motions.

This medical malpractice action stems from the alleged misdiagnosis by a Veteran's Administration physician of a back injury sustained by plaintiff Thomas G. Sleeth ("plaintiff"). The injury was correctly diagnosed two days later, whereupon plaintiff underwent surgery.

Defendant's motion for summary judgment focuses on the question of proximate cause, that is, whether the delay of two days before surgery was a substantial factor in causing plaintiff's continued symptoms of nerve damage.

Reconsideration of the March 8, 2007 ruling is denied, as is the other relief requested by defendant on March 23, 2007 in connection with plaintiffs' belated filing on the issue of proximate cause (Dkt. Nos. 80, 82). On the present record, which includes the March 1, 2007 affirmation of plaintiffs' expert, Andrew Jenis, M.D., material questions of fact exist warranting denial of summary judgment.

It is therefore

ORDERED that defendant's motion for summary judgment (Dkt. No. 75) is denied; and it is further

ORDERED that defendant's March 23, 2007 request (Dkt. No. 83) for reconsideration of the Court's March 8, 2007 ruling and/or related relief is denied; and it is further

ORDERED that the case is deemed trial ready.

IT IS SO ORDERED.

July 17, 2007  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge